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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,736	09/10/2003	Gary M. Richter	023720-0338	3906

7590 06/15/2004

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EXAMINER

SZUMNY, JONATHON A

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/659,736

Applicant(s)

RICHTER ET AL.

Examiner

Jon A Szumny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/15/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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This is the first office action for application number 10/659,736, Merchandising System, filed on September 10, 2003.

Priority

Domestic priority of application number 60/409,612 filed on September 10, 2002 is acknowledged.

Information Disclosure Statement

Receipt is acknowledged of Form PTO-1449, Information Disclosure Statement, which has been reviewed by the Examiner.

Drawings

The drawings are objected to because in figure 7, screws 84 should show threads. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The

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replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

On page 5, paragraph 21, line 2, "system" should be --systems--;

On page 7, paragraph 26, line 13, "inches" should be --inch--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention.

Claims 1-17, 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, line 5, the phrase "...tray systems *may be* attached to the grid..." is ambiguous since it is not clear if the tray systems are or are not positively included in the invention. For the purposes of this office action, the Examiner will assume the tray systems are not positively included in claim 1.

Regarding claims 29 and 30, the applicant is attempted to positively claim the "holder" by specifying that the holder is "removable" and is a "tray system". However, in claim 28, the holder has merely been recited functionally ("...for attachment of a holder"). The applicant must make it clear whether the holder is meant to be *positively* or *functionally* recited. For the purposes of this office action, the Examiner will assume the holder is recited functionally.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 5-12, 18-23 and 25-34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent number 4,127,196 to Boucher.

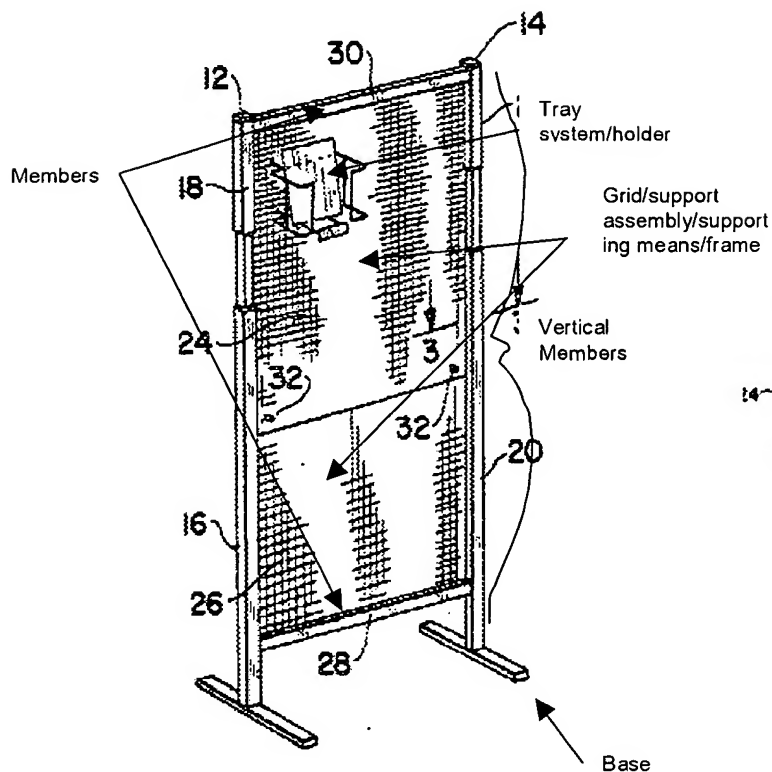


FIG. 1

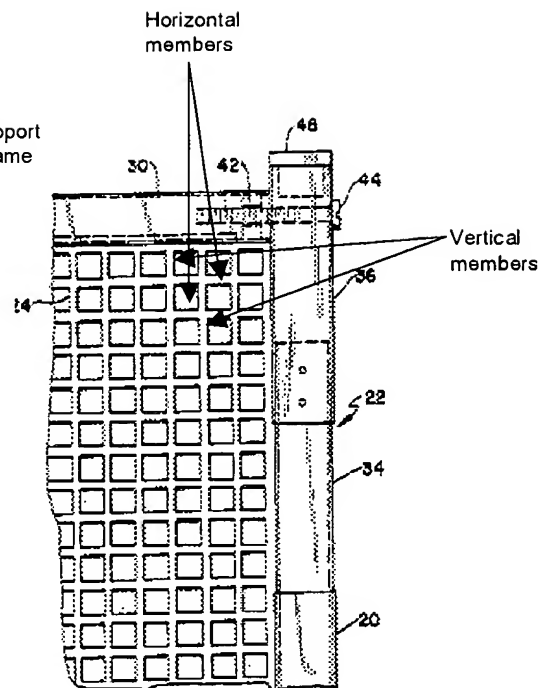


FIG. 2

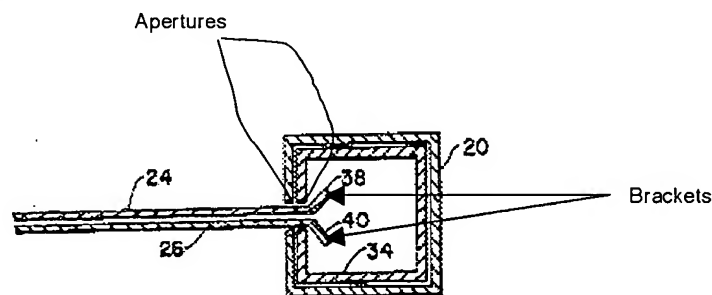


FIG. 3

Boucher '196 discloses a system (above) comprising a grid/support assembly/supporting means/frame (above) comprising a plurality of vertical and horizontal members (above) coupled to each other and arranged in a generally planar configuration and oriented so that one or more tray systems/holders (above, a "tray" is

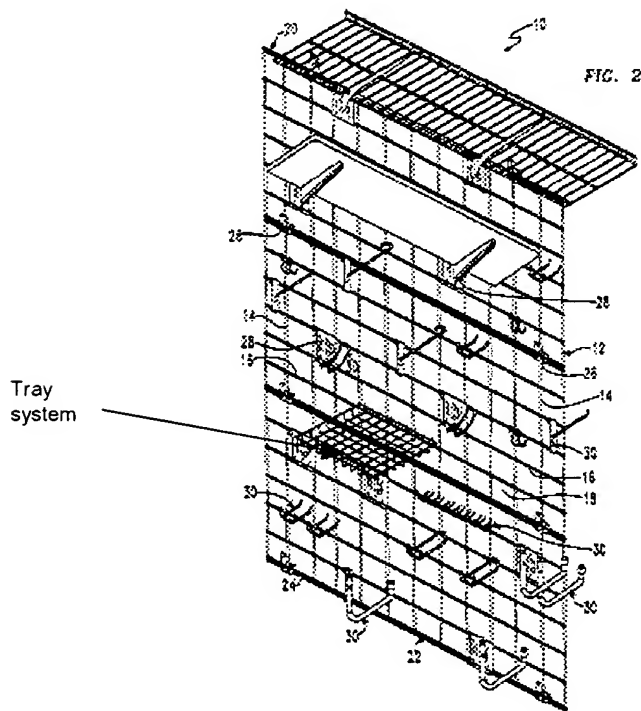
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defined in Merriam Webster's Collegiate Dictionary - 10th Edition as being "an open receptacle with a flat bottom and a low rim for holding, carrying or exhibiting articles", so clearly the indicated object above is an "open receptacle", the two bars on the bottom are "flat" since they are level or even, and the upper curved bar is considered a "low rim" since it is a curved projecting part with a small upward extension) may be attached to the grid at select locations, and members/frame members (above) coupled/fixedly attached to the grid/support assembly and inherently providing support to the grid to maintain the generally planar configuration of the grid when the one or more tray systems are attached to the grid or horizontal members and wherein the member inherently are configured to resist deformation of the support assembly/grid/supporting means and wherein the members are inherently strength/rigidity providing means, wherein the members comprise square tubes (column 3, lines 4-7), wherein the plurality of horizontal and vertical members are generally perpendicular to one another when the one or more tray systems are attached to the grids, wherein the members inherently provide support to the grid so that articles inherently may be presented and stored along generally linear lines, wherein the grid/support assembly is inherently configured to support tray systems of different sizes interchangeably, wherein the system includes a base (above) comprising one or more vertical members/elements (above) with apertures (above), wherein the system includes brackets (above), wherein at least one of the members is attached to the vertical members (see figure 2, inherently attached), wherein the support assembly is inherently configured to support tray systems in a

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generally linear orientation, wherein a holder could inherently be removable, wherein the frame is inherently configured for attachment of a holder by way of hooks.

Claims 1, 2, 12 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent number 6,299,001 to Frolov et al.



Frolov et al. '001 discloses a system (above) comprising a grid (12) comprising a plurality of vertical and horizontal members (14,16) arranged in a generally planar configuration and oriented so that one or more tray systems (above) may be attached to the grid at select locations, and members (24, column 3, lines 60-63) coupled to the grid and inherently providing support to the grid to maintain the generally planar

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configuration of the grid when one or more tray systems are attached to the grid, wherein there are a plurality of grids (see figure 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher '196 in view of U.S. Patent number 4,501,369 to Fox.

Boucher '196 discloses the previously described invention wherein the members comprise $\frac{3}{4}$ inch 18 gauge metal, but fails to specifically teach the members to comprise about one inch 11 gauge steel. However, Fox '369 reveals the use of square sectioned steel tubing in a merchandising system (column 2, lines 44-45 and line 59). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the members of Boucher '196 of steel as in Fox '369 since it is well known that doing so is common in the art, in addition to the fact that doing so would provide for a more sturdy system. Additionally, Boucher '196 in view of Fox '369 teach the members to be $\frac{3}{4}$ inch and 18 gauge, but fail to specifically teach the members to be about one inch and about 11 gauge. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the members of any number of various dimensions, including about a one inch square tube

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and about 11 gauge because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See In re Kuhle, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frolov et al. '001

Frolov et al. '001 teaches the previous invention failing to specifically teach the vertical members to have a diameter of about 0.30 to 0.425 inches and more specifically a diameter of about 0.375 inches, or the horizontal members to have a diameter of about 0.285 to 0.35 inches and more specifically a diameter of about 0.306 to about 0.312 inches. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have constructed the diameters of the vertical and horizontal members of any number of various dimensions, including those as previously recited, because doing so is considered a design choice and hence not considered patentable since the applicant has not specifically recited in the originally filed specification why such a dimension is critical to the invention or produces any unexpected result. See In re Kuhle, 526 F.2d 553, 188, USPQ 7 (CCPA 1975).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boucher '196.

Boucher '196 discloses the previously described invention that includes a tray system, but failed to specifically teach the tray system to includes a plurality of tray systems. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to have included a plurality of tray systems since doing so would be seen as simply a duplication of parts. See *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rosenthal '770, Cobb et al. '230, Zadak '035, Morandi '331, Boyer '107, Welch et al. '168 and Jorgensen '094 teach various systems including grids of vertical and horizontal members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Jon Szumny', with a stylized flourish at the end.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
June 8, 2004